

The opinion in support of the decision being entered today was **not** written for publication and
is **not** binding precedent of the Board.

Paper No. []

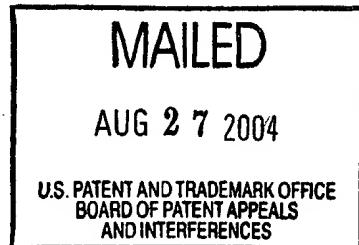
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GERARD LAND
and JEAN COTTERET

Appeal No. 2004-0795
Application No. 09/600,134

HEARD: August 17, 2004



Before KIMLIN, TIMM and JEFFREY T. SMITH, *Administrative Patent Judges*.
JEFFREY T. SMITH, *Administrative Patent Judge*.

Decision on appeal under 35 U.S.C. § 134

Applicants appeal the decision of the Primary Examiner finally rejecting claims 22-58. We have jurisdiction under 35 U.S.C. § 134.¹

¹ In rendering our decision we have considered Appellants' position present in the Brief, filed June 9, 2003, and the Reply Brief, filed October 28, 2003.

CITED REFERENCES

As evidence of unpatentability, the Examiner relies on the following references:

Aaslyng	WO 97/19999	Jun. 5, 1997
Audousset et al. (Audousset)	5,769,903	Jun. 23, 1998

The Examiner rejected claims 22-58 under 35 U.S.C. § 103(a) over the combined teachings of Aaslyng and Audousset. (Answer, pp. 3-7).

BACKGROUND

Appellants' invention relates to a composition for the oxidation dyeing of keratinous fibers. The composition comprises at least one oxidation base chosen from 3-methyl-4-aminophenol and acid addition salts thereof and at least one enzyme of laccase type, dyeing methods using this composition and a kit comprising this composition. According to Appellants, Brief page 3, the dye formulations of this invention results in coloring without causing significant degradation of the keratinous fibers. Claim 22 which is representative of the claimed invention appears below:

22. A composition for the oxidation dyeing of keratinous fibers comprising:

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- (a) at least one oxidation base chosen from 3-methyl-4-aminophenol and acid addition salts of said at least one oxidation base; and
- (b) at least one enzyme of laccase type.

Appellants have indicated (Brief, pages 3-4) that for purposes of appeal the claims stand or fall together. We select claim 22 as representative of the claims on appeal. 37 CFR § 1.192 (c)(7) and (8) (2003).

DISCUSSION

We have carefully reviewed the claims, specification and applied prior art, including all of the arguments advanced by both the Examiner and Appellants in support of their respective positions. This review leads us to conclude that the Examiner's rejection is well founded.

The subject matter of claim 22 is directed to a composition for the oxidation dyeing of keratinous fibers. The composition comprises at least one oxidation base chosen from 3-methyl-4-aminophenol and acid addition salts thereof and at least one enzyme of laccase type.

Aaslyng discloses a composition for the oxidation dyeing of keratinous fibers. The composition comprises a dye precursor and at least one enzyme of laccase type. Aaslyng discloses that the "dye precursor(s) may be (an) aromatic compound(s) belonging to one of three major chemical families: the diamines,

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aminophenols (or amino-naphtols) and the phenols." (Page 9, ll. 15-17). Aaslyng does not exemplify the compound 4-amino-3methylphenol. The Examiner cited the Audousset reference to teach that compound 4-amino-3methylphenol is a known oxidative dye precursor. (Answer, p. 6). The Examiner concluded that the use of the known compound 4-amino-3-methylphenol as a dye precursor in the formulation of Aaslyng would have been obvious to a person of ordinary skill in the art. (Answer, p. 6).

Appellants argue that Aaslyng "discloses the singular para-aminophenol as a species of oxidation base, rather than the plural genus of para-aminophenols". (Brief, p. 6). Further, Appellants argue that in light of Aaslyng's disclosure of a singular para-aminophenol specie, there is no motivation to select the 4-amino-3-methylphenol compound from the teachings of Audousset. (Brief, pp. 9-10).

Appellants' arguments regarding the suitability of using the compound 4-amino-3methylphenol as a dye precursor in Aaslyng are not persuasive because of the disclosure in Aaslyng cited above. A person of ordinary skill in the art would have reasonably expected, based on the disclosure in Aaslyng, that compounds within the genus of aminophenols would have been suitable for use an oxidative dye precursor. This would have included the compound 4-amino-3methylphenol. "For obviousness under § 103, all that is required is a reasonable expectation of

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success." *In re O'Farrell*, 853 F.2d 894, 904, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988). In light of the foregoing and for the reasons expressed in the Answer, it is our determination that the Examiner has established a *prima facie* case of obviousness within the meaning of § 103 which Appellants have failed to successfully rebut. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

CONCLUSION

The Examiner's rejection of claims 22-58 under 35 U.S.C. § 103(a) over the combined teachings of Aaslyng and Audousset is affirmed.

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Time period for response

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

Edward C. Kimlin
EDWARD C. KIMLIN
Administrative Patent Judge

Catherine Timm
CATHERINE TIMM
Administrative Patent Judge


JEFFREY T. SMITH
Administrative Patent Judge

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